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REMARKS

Claims 1-38 are pending in the present application. Reconsideration is respectfully requested for the following reasons.

1. The Restriction Requirement

As explained below, the Examiner has imposed a seven-way restriction requirement on the claims. Those claims included 38 total claims and two independent claims. Specifically, the Examiner has restricted the claims as follows:

Claims 1 and 18 are generic. See M.P.E.P. §§806.04(d) and 806.04(e).

Group I - claim 2, drawn to a dough divider with a delay device,

Group II - claims 3-6, 14-17, 19-22 and 31-33, drawn to a dough divider with a specific press plate configuration;

Group III - claims 7, 8, 23 and 24, drawn to a dough divider with a combination specific press plate configuration and a knife assembly;

Group IV - claims 10-13 and 27-30, drawn to a dough divider with a knife assembly;

Group V - claims 9, 25 and 26, drawn to a dough divider with a specific lid configuration;

Group VI - claim 35, drawn to a dough divider with a combination specific press plate configuration and a delay device; and

Group VII - claims 36-38, drawn to a dough divider with a combination specific press plate configuration and a specific lid configuration.

Applicant provisionally elects Group II of the claims with traverse. Group II of the claims is drawn to a dough divider with a press plate as defined in claims 1, 3-6, 14-22 and 31-33. Furthermore, since claim 34 was not addressed in the Office Action, Applicant assumes that claim 34 belongs in all groups. Additionally, as discussed below, claims 2, 7-13, 23-30 and 35-38 should be examined with the election of Group II.

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2. Legal Standards

MPEP § 605.05 states:

Where two or more related inventions are being claimed, the principal question to be determined in connection with a requirement to restrict a rejection on the ground of double patenting is whether or not the inventions as claimed are distinct. If they are not distinct, restriction may be proper. If they are distinct, restriction is never proper.

MPEP § 806.05(a) states:

A combination is an organization of which a subcombination or element is a part." Thus, a combination claim may, for example, include elements A, B, and C, whereas the subcombination by definition could only include A and B, A and C, or B and C. The subcombination clearly could not include all the elements of the combination.

Regarding the criteria for subcombinations usable together, MPEP §806.05(d) states "Two or more claimed subcombinations, disclosed as usable together in a single combination, in which can be shown to be separately usable, are usually distinct from each other." Care should always be exercised in this situation to determine if the several subcombinations are generically claimed. See MPEP § 806.04(b).

Where subcombinations as disclosed and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to related inventions. If restriction is improper under either practice, it should not be required (MPEP § 806.04(b)).

The practice applicable to election of species is set forth in MPEP § 806.04(f), which states:

Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while the second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species.

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Thus, for two claims characterized as subcombinations that both depend from the same independent and generic claim, the claims must be distinct under the criteria applicable to subcombinations having separate utility and the claims must define mutually exclusive characteristics.

3. Arguments

Based upon the above legal standards, Applicants submit that the restriction requirement made by the Examiner is improper for the reasons stated below.

As an initial matter, Applicants submit that Groups III, VI and VII should be examined with any elective group because the Examiner has not identified any burden for examining these additional groups. Groups III, VI and VII have only been identified by the Examiner as belonging in class 83. Since the claims of Group II also belong in class 83, there is no additional burden on the Examiner for examining the claims of Groups III, VI and VII. Accordingly, claims 7, 8, 23, 24 and 35-38 should be examined along with Group II.

Regarding the restriction for subcombinations usable together, distinct claims each claiming subcombinations usable together that contain species under a genus (or generic) claim must have the question of restriction determined by both the practice applicable to election of species and the practice applicable to related inventions. The inventions of Groups I, II, III, IV, V, VI and VII include dependent claims that are all dependent on independent claim 1, and as such, the subcombinations are claimed under a common genus claim. Specifically, claim 1 is a generic claim. Notably, the Examiner states that claims 1 and 18 recite "subject matter that is common to all of the groups." In other words, claim 1 reads upon all of the claims that depend from claim 1. Moreover, the Examiner has indicated that all of the claims, except for claims 1 and 18, are claims drawn to a subcombination. Claims 2-17, 35 and 36 are dependent upon claim 1.

An independent claim cannot be considered a combination relative to a "subcombination" claim that depends from that independent claim. A subcombination by definition includes less than all the elements of the combination. A dependent claim clearly cannot include less than all the elements of the claim(s) on which it depends. Accordingly, for

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example, claim 2 (Group I), claim 3 (Group II), claim 7 (Group III), claim 10 (Group IV), claim 9 (Group V), claim 35 (Group VI) and claim 36 (Group VII) are all combination claims with claim 1 being the subcombination claim of each of these claims. Therefore, claim 1 is readable on all of its dependant claims and is therefore generic to all of the claims that depend upon claim 1. Clearly, the dependent claims in the groups include all the elements of claim 1, from which claims 2-17, 35 and 36 depend. Thus, the requirements for election of species must also be applied. Here, claimed elements of different groups as defined by the Examiner may be usable together. Therefore, such components are not mutually exclusive of one another. For an election of species requirement to be proper, the two claimed species must be mutually exclusive of one another and may not be used together in the combination. Because the Examiner has failed to apply the criteria for election of species and because the criteria would not apply in this instance, Applicants submit that the restriction requirement between the groups is improper.

Furthermore, claimed subcombinations must be disclosed as usable together in a single combination. "Two or more claim subcombinations, disclosed as useful together in a single combination, and which can be shown to be separately usable, are usually distinct from each other." M.P.E.P. § 806.05(b). Groups I, II, III, IV, V, VI and VII are not subcombinations that are disclosed as usable together in a single combination. As an example, claims 3, 7, 9, 10, 35 and 36 are claims that do not define subcombinations disclosed as usable together in a single combination. Claims 3, 7, 9, 10, 35 and 36 are all dependent claims. "Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference and to the dependent claim." 37 C.F.R. § 1.75(c). These claims are discussed directly below.

Therefore, claim 3 defines a dough divider comprising a hopper with a lid, the lid having an open position and a closed position; a latch assembly adapted to maintain the lid in the closed position when activated and to discontinue maintaining the lid in the closed position when deactivated; a press plate vertically slidable within the hopper; the hopper being adapted to accept dough between the lid and the press plate; the press plate adapted to be driven towards the lid in order to compress the dough between the press plate and the lid within the

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hopper; and wherein the latch assembly automatically activates to maintain the lid in the closed position while the press plate is being driven towards the lid, wherein the press plate has a vertical stroke between a top of the hopper and a bottom of the hopper; and the press plate is configured to move towards the bottom of the hopper when the pressure applied to a top of the press plate from the dough within the hopper reaches a predetermined level.

Claim 7 defines a dough divider comprising a hopper with a lid, the lid having an open position and a closed position; a latch assembly adapted to maintain the lid in the closed position when activated and to discontinue maintaining the lid in the closed position when deactivated; a press plate vertically slidable within the hopper; the hopper being adapted to accept dough between the lid and the press plate; the press plate adapted to be driven towards the lid in order to compress the dough between the press plate and the lid within the hopper; and wherein the latch assembly automatically activates to maintain the lid in the closed position while the press plate is being driven towards the lid, wherein the press plate has a vertical stroke between a top of the hopper and a bottom of the hopper; and the press plate is configured to move towards the bottom of the hopper when the pressure applied to a top of the press plate from the dough within the hopper reaches a predetermined level, wherein the predetermined level is an amount of force greater than an amount of friction between the hopper and the press plate, further including a reversible cylinder assembly configured to move the press plate between the top of the hopper and the bottom of the hopper, wherein the reversible cylinder assembly is adapted to move downward in order to allow the press plate to move towards the bottom of the hopper when the pressure applied to the top of the press plate from the dough when the hopper reaches the predetermined level, further comprising a knife assembly adapted to protrude through the press plate and divide the dough into an equal number of pieces.

Claim 10 defines a dough divider comprising a hopper with a lid, the lid having an open position and a closed position; a latch assembly adapted to maintain the lid in the closed position when activated and to discontinue maintaining the lid in the closed position when deactivated; a press plate vertically slidable within the hopper; the hopper being adapted to accept dough between the lid and the press plate; the press plate adapted to be driven towards

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the lid in order to compress the dough between the press plate and the lid within the hopper; and wherein the latch assembly automatically activates to maintain the lid in the closed position while the press plate is being driven towards the lid, further comprising a knife assembly adapted to protrude through the press plate and divide the dough into an equal number of pieces.

Claim 9 defines a dough divider comprising a hopper with a lid, the lid having an open position and a closed position; a latch assembly adapted to maintain the lid in the closed position when activated and to discontinue maintaining the lid in the closed position when deactivated; a press plate vertically slidable within the hopper; the hopper being adapted to accept dough between the lid and the press plate; the press plate adapted to be driven towards the lid in order to compress the dough between the press plate and the lid within the hopper; and wherein the latch assembly automatically activates to maintain the lid in the closed position while the press plate is being driven towards the lid, wherein the lid is rotatably connected to the hopper and adapted to compress the dough within the hopper.

Claim 35 defines a dough divider comprising a hopper with a lid, the lid having an open position and a closed position; a latch assembly adapted to maintain the lid in the closed position when activated and to discontinue maintaining the lid in the closed position when deactivated; a press plate vertically slidable within the hopper; the hopper being adapted to accept dough between the lid and the press plate; the press plate adapted to be driven towards the lid in order to compress the dough between the press plate and the lid within the hopper; and wherein the latch assembly automatically activates to maintain the lid in the closed position while the press plate is being driven towards the lid, wherein the press plate has a vertical stroke between a top of the hopper and a bottom of the hopper; and the press plate is configured to move towards the bottom of the hopper when the pressure applied to a top of the press plate from the dough within the hopper reaches a predetermined level, further including a delay device configured to delay the driving of the press plate towards the lid such that the latch assembly is activated a predetermined amount of time before the press plate is driven towards the lid.

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Claim 36 defines a dough divider comprising a hopper with a lid, the lid having an open position and a closed position; a latch assembly adapted to maintain the lid in the closed position when activated and to discontinue maintaining the lid in the closed position when deactivated; a press plate vertically slidable within the hopper; the hopper being adapted to accept dough between the lid and the press plate; the press plate adapted to be driven towards the lid in order to compress the dough between the press plate and the lid within the hopper; and wherein the latch assembly automatically activates to maintain the lid in the closed position while the press plate is being driven towards the lid, wherein the press plate has a vertical stroke between a top of the hopper and a bottom of the hopper; and the press plate is configured to move towards the bottom of the hopper when the pressure applied to a top of the press plate from the dough within the hopper reaches a predetermined level, wherein the lid is rotatably connected to the hopper and adapted to compress the dough within the hopper.

If there were subcombinations as the Examiner has stated, the subcombinations combined together in a single combination would include at least seven identical hoppers, seven identical latch assemblies and seven identical press plates. However, this is not the case. Additionally, no such combination is disclosed in the present application. Therefore, the claims in Groups I, II, III, IV, V, VI and VII are not subcombinations that should have been subject to a restriction requirement.

Upon reviewing the Examiner's statements as to why the claims are restricted, it is apparent that the Examiner may be considering dependent claims as though they were independent claims. Applicant submits that the restriction requirement as presented is clearly erroneous and therefore submit that the restriction requirement regarding subcombinations usable together should be withdrawn and therefore the claims identified in Groups I, IV and V should be examined with the election of Group II. Furthermore, since the Examiner has not demonstrated a burden for examining Groups III, VI and VII, Applicant submits that Groups III, VI and VII should be examined along with Group II. Accordingly, Applicant submits that all claims should be examined along with the election of Group II.

All pending claims 1-38 are believed to be in condition for allowance, and a Notice of Allowability is therefore earnestly solicited.

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Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version With Markings to Show Changes Made."

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Claim 6 has been amended as follows:

6. (Amended) The dough divider of claim [4] 5, wherein:

the reversible cylinder assembly is adapted to move downward in order to allow the press plate to move towards the bottom of the hopper when the pressure applied to the top of the press plate from the dough when the hopper reaches the predetermined level.